

Included below is a variety of information on recent HIPAA developments and interpretations of the rules. Please be sure to note that in some cases the information presented may be the opinion of the original author. We need to be sure to view it in the context of our own organizations and environment. In some cases you may need legal opinions and/or decision documentation when interpreting the rules.

Have a great day!!!  
Ken

TOPICS:

- [hipaalive] "Covered entity"
- [hipaalive] Release of Information
- [hipaalive] Workman's Comp
- [hipaalive] PRIVACY: Minimum necessary clause
- [hipaalive] Third Party Administrator (TPA) requirements
- [hipaalert] H I P A A L E R T - L i t e April 23, 2001
- [hipaalive] Place of service code
- [hipaalert] 1 Week Away! HANDS-ON HIPAA Audio Program

\*\*\*\*\* [hipaalive] RE: "Covered entity" \*\*\*\*\*  
\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*  
from: [kweber@pinnacleolns.com](mailto:kweber@pinnacleolns.com)

Just be careful about the "telephone" thing. If you're using the phone as an automated input device (as many health plans use for eligibility inquiries, for example), we believe that it IS an electronic transaction. The first time you perform one of these inquiries, you become a covered entity.

At 01:34 PM 4/5/2001 -0400, you wrote:

>2) Generally, you would be a covered entity if you conduct an electronic  
>communication of information that could have been conducted using one of the  
>listed HIPAA standard transactions. I do not understand that communication  
>to include faxes or telephone conversations. However, it would include  
>direct data entry such as using a health plan's web site to enter  
>information or using a terminal connection to the health plan's system.  
>  
>2. What does electronic form mean? Does that include telephone and fax, or  
>just computer/EDI transmission?

\*\*\*\*\* [hipaalive] Release of Information \*\*\*\*\*  
\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*  
Jack,

1) I think the opposite is true. You would have a difficult time defending why you denied or delayed a provider's ability to access PHI needed for treatment, especially in the wake of a negative patient outcome.

2) There are a number of good reasons for providers to use PHI from individuals other than the patient being treated. The amount and source of PHI used for treatment purposes is up to the professional judgment of the provider.

3) There is more potential risk to the covered entity from a negative patient outcome created by limiting a providers access to PHI then there is risk from a privacy violation created by enabling a provider's access to PHI.

4) I don't providers need to be ready to defend their professional judgment on how much PHI to use for the purpose of treatment.

The Privacy rule does not question providers judgment, it defers to it. There is language threaded throughout the Privacy rule communicating that there is no intent to restricted or delayed providers obtaining access to information they need to make timely patient care decisions.

5) Access to information for the purpose of treatment retains primacy over privacy and security concerns.

6) The rule is very clear that there is no need to make a case by case determination on how much PHI is needed to disclose.

Covered entities can set broad policies that would enable providers to access ALL PHI for ANY individual for the purpose of treatment.

Thanks,

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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

The minimum disclosure provision doesn't mean that your employees cannot have access to PHI they need to perform their work. It simply requires that your employees have access only to that PHI they need to perform their job function.

If an employee needs to have the information to perform their job, then you can give them access to that information. If every employee needs access to every piece of your customer's PHI to perform their job functions, then you can give them that access. However, you still should perform an analysis of information required by job function to support the need for PHI. From that analysis you can formulate policies that enable your personnel to access any PHI that their job function requires.

This is the same process that your customers will follow. In fact, I would be surprised if your customers did not require you to at least self-certify compliance to the Security rule, which also has need to know language that is similar to the minimum disclosure provision in Privacy.

One of the concerns you should be focusing on is that you will

be controlled by your customers business associate contract and you need to make sure that the terms of that contract allow you to have access to enough of your customer's PHI for you to perform your service.

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\*\*\*\*\* [hipaalive] Workman's Comp \*\*\*\*\*  
\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

Worker's comp is exempt in the HIPAA regulation definitions of covered entities--however, the reality is that they will be operating in a HIPAA-compliant world and may find it difficult to retain a different standard. Here in Washington State, our worker's comp agency has recognized this reality and is gearing up to voluntarily comply.

\*\*\*This message may be confidential. If you received it by mistake, please notify the sender and delete the message. All messages to and from the Department of Health may be disclosed to the public.\*\*\*

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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*  
Technically Workers Compensation is exempt from HIPAA. But.. since the providers must comply for everyone else workers compensation programs should as well.

Some people have expressed concern that providers will not provide worker compensation services because of the added cost of support a different type of billing for a very low volume "payor".

The other issue is justifying to patients why privacy requirements don't apply.

These may be fairly soft reasons but doing the right thing is always best in the long run.

Allen McCall  
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\*\*\*\*\* [hipaalive] RE: PRIVACY: Minimum necessary clause \*\*\*\*\*

\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

The minimum necessary clause is going to raise questions like this for a long time.

The requirement is that use and disclosure be limited to the minimum necessary information to accomplish the purpose. "Access" is not necessarily "use" or "disclosure." For instance, a hospital medical records clerk has access to the entire paper record, but does not necessarily use or disclose any of it when removing or re-filing the folder.

Similarly, a programmer may, by virtue of her duties, have access to all PHI on the system, but may not actually use or disclose any of it. Or may use only what is necessary to write and test a program.

The minimum necessary rule requires "reasonable efforts" to limit the use or disclosure of PHI to the minimum necessary. In the case of a programmer, the reasonable effort might be training in the importance of privacy, and the penalty for violating privacy rules, the same as for a medical records clerk.

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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

I want to reinforce Luba's response and add a bit. "Minimum necessary" determinations must be made for all USES, even for treatment purposes. (Note that disclosures to a provider or requests by a provider for treatment purposes are exempted--but not uses, even for treatment. See section 164.502, subd. (b)(2)(i). I'd be delighted to have someone point me to the portion of the Final Rule which does exempt uses for treatment from the minimum necessary determination.)

The process needed is, again as Luba described, a policy/procedure development which addresses the scope of PHI needed for each type/category of employee to perform his/her job. If full access to all PHI is indeed the "minimum amount necessary" for the IS analysts to do their job, then the policy should reflect that. Note that absent a clear policy determination, provision to anyone (excepting patient authorized disclosures, disclosures to the Secty of DHHS, and disclosures to providers for treatment purposes) of the entire medical record is a violation of the Rule. (See 45 CFR section 164.514, subd. (d)(5)), found at 65 Fed. Reg. 82819 (December 28, 2000).)

Hope this adds a bit.

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Legal Counsel  
Sharp HealthCare

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\*\*\*\*\* [hipaalive] Third Party Administrator (TPA) requirements  
\*\*\*\*\*

\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

See Page 50369 162.923 Requirements for Covered Entities vs. the Comment and Response you referred to below.

#### (A) General Rule

Except as otherwise provided in this part, if a covered entity conducts with another entity (or within the same covered entity), using electronic media, a transaction for which the Secretary has adopted a standard under this part, the covered entity must conduct the transaction as a standard transaction.

Yes, you are required to use the standard transactions.

-----Original Message-----

From: [Chris.Henkenius@mutualofomaha.com](mailto:Chris.Henkenius@mutualofomaha.com)  
[\[mailto:Chris.Henkenius@mutualofomaha.com\]](mailto:Chris.Henkenius@mutualofomaha.com)

Sent: Wednesday, April 18, 2001 12:28 PM

To: HIPAAlive Discussion List

Subject: [hipaalive] GENERAL: TPA requirements

\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

They way I understand compliance, if we communicate electronically with a provider, we must do so with standard transactions. If our Third Party Administrator (TPA) communicates electronically with a provider, we must make sure they do so with standard transactions. However, our communication with our own contracted TPA does not require standard transactions????????????? What happens if a TPA requests us to send a standard transaction? Are we legally required to do so?

Refer to Federal Register page 50317, column 3, example 2.

\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

Your information going to the TPA, the same with a clearinghouse does not have to be in the standard format, but it must contain all the data elements for the information to be converted into a HIPAA compliant format. Any payer will be sending data back to you in a HIPAA compliant format and unless you use a clearinghouse or the TPA to convert it into a non-standard format you will have to accept it. If the TPA or clearinghouse requires that you send a standard transaction you would have to comply or use a clearinghouse to convert your data from the non-standard format into the standard format. After all you want to get paid don't you?

\*\*\*\*\* [hipaalert] H I P A A L E R T - l i t e    April 23, 2001  
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H I P A A L E R T - l i t e                      April 23, 2001

>> From Phoenix Health Systems...HIPAA Knowledge...HIPAA Solutions <<  
    > Healthcare IT Consulting & Outsourcing <

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H I P A A n e w s

\*\* Bill May be Introduced to Attempt Delay in HIPAA Deadlines \*\*

The Blue Cross/Blue Shield Association announced Friday that it expects members of Congress to introduce legislation soon that would delay HIPAA's simplification regulations. Claiming the rules are more costly and burdensome than HHS had anticipated, BC/BS, the American Medical Association and the American Public Human Services Association want DHHS to delay the regulations until two years after all HIPAA rules have been published - which could be 2004. BC/BS said the bill would be bipartisan and that other healthcare groups are expected to support it.  
<http://www.hipaadvisory.com/news/2001/bcbs0420.htm>

\*\* AHA Presses Congress, Administration for HIPAA Funds \*\*

AHA NEWS NOW reported last week that the AHA will go to Congress and the administration for financial help in dealing with the HIPAA privacy rules that became effective April 14. According to Melinda Hatton, AHA's chief Washington counsel, the AHA has begun to seek funding from Congress to help hospitals comply with what the AHA regards as "complex and burdensome regulations." The AHA is also working to change the rules, concentrating on those affecting consent requirements, minimum necessary use and disclosure of medical information, and oral communications.  
<http://www.hipaadvisory.com/news/2001/aha0417.htm>

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H I P A A l a t e s t

NEW IN HIPAAVIEWS:

- The Blind Men & the Hippo, by Mike Rubingh  
HIPAA, like the elephant in the well-known fable about the blind men and the elephant, means different things to different people -- depending on their niche in the industry.  
<http://www.hipaadvisory.com/views/hippo042001.htm>

- Using an Internet-Based Medical Records Repository and Retaining Patient Confidentiality, by Roy Schoenberg, fellow, Charles Safran, director, Center for Clinical Computing, Beth Israel Deaconess Medical Center, Harvard Medical School. The authors propose a patient controlled, "granularly secured," cross sectional medical record that is accessible via the web.  
<http://www.hipaadvisory.com/views/patientconf.htm>

#### NEW IN HIPAACTION:

- Case study: Using the Web to Communicate with Patients  
By Alex Fernandez, Jr., MBA. Physician practice reduces costs, streamlines office operations, and maintains patient privacy by providing secure web communications with patients.  
<http://www.hipaadvisory.com/action/Casestudy041801.htm>

#### NEW IN HIPAAUDIO:

- HIPAA-In-the-Trenches Audioconference  
Hands-on HIPAA for Managers & Dept Heads  
May 2nd & 9th  
<http://www.hipaadvisory.com/action/signup/trenches/>

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HIPAAAlert-lite is our weekly version of HIPAAAlert, Phoenix Health Systems'acclaimed monthly email newsletter. HIPAAAlert-lite is published each Monday to keep subscribers abreast of breaking news and industry developments in healthcare privacy and security.

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Our Other HIPAA resources:

Web site: <http://www.hipaadvisory.com>

Discussion List: <http://www.hipaadvisory.com/live/>

Weekly Awareness Note: <http://www.hipaadvisory.com/notes/>

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FORWARD this posting to interested associates, who may subscribe free to HIPAAAlert at:

\*\*\*\*\* [hipaalive] Place of service code

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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

UC is not a valid Place of Service code, and using it would put you out of compliance. HCFA is the owner of the Place of Service code list (<http://www.hcfa.gov/medicaid/poshome.htm>) and they haven't defined a specific code for Urgent Care Facilities. This site also has more verbose descriptions to help you pick the right code. You can also make a code maintenance request through this site.

Jonathan Hale  
Health New England

\*\*\*\*\* [hipaalert] 1 Week Away! HANDS-ON HIPAA Audio Program \*\*\*\*\*

>>> <[info@phoenixhealth.com](mailto:info@phoenixhealth.com)> 04/24/01 03:29PM >>>

If you've been meaning to sign up for this two-part  
audio series on May 2nd and 9th, time is running out!

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\*\* HIPAA-IN-THE-TRENCHES: Hands-on HIPAA \*\*

For Managers & Department Heads  
2-part Audioconference program plus follow-up Q/A Forums

Sign up at:

<http://www.hipaadvisory.com/action/signup/trenches/index.cfm>

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OVERVIEW:

In two, jam-packed 90-minute audio sessions...  
What every healthcare manager and compliance team  
member must know about HIPAA and the new Privacy Rule,  
Transactions, Code Sets, Identifiers, and the Security  
regulations. A hands-on, practical workshop covering  
how HIPAA implementation will impact individual  
departments within healthcare organizations, and how  
to conduct cost-effective gap analyses, compliance  
project planning, and enterprise-wide implementation.

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PART I: Wednesday, May 2, 2001 - 2 PM Eastern

\*\* Transactions, Code Sets and Security \*\*

90-minute AudioConference, plus follow-up Q/A  
via Expert Web Forum through Friday, May 4

PART II: Wednesday, May 9, 2001 - 2 PM Eastern

\*\* Unique Identifiers and Privacy \*\*

90-minute AudioConference, plus follow-up Q/A  
via Expert Web Forum through Friday, May 11

See detailed course description and sign up at:

<http://www.hipaadvisory.com/action/signup/trenches/index.cfm>

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MORE INFO:

If you will be in the trenches of actual HIPAA compliance



planning, assessment and implementation for your organization, you need practical answers to practical questions. The top level HIPAA summaries you may have received are important -- but if you and your compliance team members are going to turn HIPAA into an action plan that makes practical and financial sense for YOUR organization, you need more.

Here it is. In two intensive audio sessions. HIPAA's implications, reg by reg, department by department, in detail. Plus solid, project planning guidelines based on Phoenix Health Systems' well- researched and documented compliance methodology.

BONUS! Don't overlook our follow-up 3-day online Q/A forums following each session. "E-consultants" from our HIPAA Solutions Team will answer any and all questions you and other participants post that result from the audioconferences.

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#### WHO WILL BENEFIT?

For healthcare managers, department heads, professionals, technical and administrative staff, and others who will lead or be involved in enterprise-wide or departmental HIPAA assessment and implementation.

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See detailed course description and sign up at:

<http://www.hipaadvisory.com/action/signup/trenches/index.cfm>

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